INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Nature of case and statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	3
Dates of judgments and appeals	4
Manner in which Federal questions were raised	5
The Federal questions involved are substantial	7
Arbitrary and unreasonable effect of the Act	12
Denial of equal protection of the laws	15
Violation of Article I, Section 10 of the Constitution of the United States	16
Appendix "A"—Opinion of the Supreme Court of Tennessee	20
Appendix "B"—Opinion on petition to rehear	27

Table of Cases Cited

Babcock v. *Nudelman*, 367 Ill. 626, 12 N. E. 635	8
Butcher v. *Maybury*, 8 F. (2d) 155	14
Cummings v. *Missouri*, 4 Wall. 277, 18 L. Ed. 356	17
Dent v. *West Virginia*, 129 U. S. 114, 32 L. Ed. 623	14
Garland, Ex parte, 4 Wall. 333, 18 L. Ed. 366	17
Hawker v. *New York*, 170 U. S. 189, 42 L. Ed. 1002	14, 18
McMurdo v. *Getter*, 10 N. E. (2d) 139	8
Millsap v. *Alderson*, 219 Pac. 469	8
Nashville, Chattanooga & St. Louis Ry. Co. v. *Walters*, 294 U. S. 405, 79 L. Ed. 949	8, 13
Skinner v. *Oklahoma*, 316 U. S. 535, 86 L. Ed. 1655	13, 16
United States v. *Carolene Products Co.*, 304 U. S. 144, 82 L. Ed. 1234	8
United States v. *Lovett*, 328 U. S. 303, 90 L. Ed. 1252	17
Yick Wo v. *Hopkins*, 118 U. S. 356, 30 L. Ed. 220	16

STATUTES CITED

Page

American Jurisprudence, Volume 1, Sec. 347, p. 1175 16
Constitution of the United States:
Article 1, Section 10 ..... 3, 5, 6, 8, 16, 19
Fourteenth Amendment 2,3, 5, 6, 7, 12
Judicial Code, Section 237(a), as amended (36 Stat. 1156, 43 tSat. 937, 45 Stat. 54, 28 U. S. C. 344(a) 1, 19
Public Acts of the General Assembly of Tennessee, 1943:
Chapter 49 ..... 1, 2, 9, 10, 16
Chapter 92 10
Public Acts of the General Assembly of Tennessee, 1945:
Chapter 2 ..... 2, 3, 4, 7, 9, 19
Chapter 43 ..... 10, 11
Chapter 181 15
Public Acts of the General Assembly of Tennessee, 1947, Chapter 2 ..... 2, 3, 4, 7, 9, 19
Public Acts of Tennessee, 1939, Sec. 1 of Ch. 150 15
Williams' Annotated Code of Tennessee:
Section 6923 15
Section 7004 15

BLEED THROUGH = POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 636

W. E. DAVIS, ET AL.,

Appellants,

vs.

ROY H. BEELER, ETC., ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

STATEMENT AS TO JURISDICTION

I

Nature of Case and Statutory Provisions Sustaining Jurisdiction

This is an appeal under Section 237 (a) of the Judicial Code, as amended (36 Stat. 1156, 43 Stat. 937, 45 Stat. 54, 28 U.S.C. 344 (a)), from a final judgment of the Supreme Court of the State of Tennessee entered November 29, 1947, and an order of said Court overruling a petition for a rehearing, entered January 16, 1948. The facts upon which the appeal is based may be briefly stated as follows:

By Chapter 49 of the Public Acts of the General Assembly of the State of Tennessee, for the year 1943, the practice of

Naturopathy was recognized and regulated in the State of Tennessee as a separate and distinct calling or profession. Petitioners, some of whom had been practicing Naturopathy in the State of Tennessee prior to the passage of said Act, and some of whom came to Tennessee from other States after its passage, qualified thereunder and were admitted to practice their calling as Naturopaths in the State of Tennessee. Petitioners continued to practice their calling in said State until enactment on January 16, 1947 (approved by the Governor on January 17, 1947), of Chapter 2 of the Public Acts of the State of Tennessee for the year 1947. This Act, by Section 1, repealed the aforesaid Chapter 49 of the Public Acts of 1943, and other Acts amendatory thereof, and by Section 2 made it unlawful for any person to practice Naturopathy in this State. This Section made any violation of the Act a misdemeanor, and punishable accordingly.

On March 22, 1947, petitioners filed their original bill in the Chancery Court of Davidson County, Tennessee, seeking to enjoin the Attorney General of the State of Tennessee, Honorable Roy H. Beeler, and the several District Attorneys General of the Judicial Circuits of the State of Tennessee, from enforcing Section 2 of said Act, and praying a decree declaring said Act to be unconstitutional and void.

It was alleged in said original bill, as amended by decree entered April 21, 1947, that said Act contravened Section 1 of the Fourteenth Amendment to the Constitution of the United States, because it deprived petitioners of their liberty to pursue their calling, and of their property rights, without due process of law, and arbitrarily and unreasonably discriminated against them so as to amount to a denial of the equal protection of the laws. It was also alleged that said Act inflicted upon petitioners grievous punishment, by prohibiting the practice of their calling and confiscating their property without judicial trial, in direct contravention

BLEED THROUGH – POOR COPY

of Article I, Section 10, of the Constitution of the United States.

The defendants demurred and answered. A stipulation was prepared which disposed of the demurrers, and the case was heard upon the pleadings, stipulation, and exhibits thereto.

The Chancery Court upheld the validity of Section 1 of the Act, but held Section 2 thereof to be violative of certain State constitutional provisions and the Fourteenth Amendment to the Constitution of the United States.

The case was appealed, and the Supreme Court of Tennessee on November 29, 1947, entered a judgment reversing the Chancery Court as to Section 2 of the Act, and holding the entire Act valid and constitutional. Said Supreme Court on January 16, 1948, overruled petitioners' petition for a rehearing.

II

State Statute, the Validity of Which Is Involved

There was thus drawn in question the validity, under Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 10, of said Constitution, of Section 2 of Chapter 2 of the Public Acts of the General Assembly of the State of Tennessee, for the year 1947. As the Act is comparatively short, it is set out herein below in full.

"An Act to prevent the practice of Naturopathy in this State by repealing the statute authorizing the licensing of practitioners thereof and by prohibiting the practice of such hereafter.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That in order to prevent the practice of Naturopathy in this State, Chapter 49, Public Acts of 1943, as amended by Chapter 43, Public Acts of 1945, the

caption of which original Act is as follows: 'AN ACT to regulate and permit the practice of Naturopathy in Tennessee and to license Naturopathis Physicians, to create a board for that purpose; and to provide the manner and methods of their operation, and otherwise to allow them to adopt by-laws and regulations; and to prohibit the practice of other methods or systems under the name of Naturopathy and to provide penalities for the violation of this Act,' be and the same is hereby repealed.

"Provided, however, the repealed law shall remain in full force and effect as to all pending prosecutions, as well as to all violations of said Act already committed, and all persons having violated said Act, or having entered into an unlawful agreement or conspiracy to violate said Act, prior to the passage of this repeal statute, may be prosecuted and punished therefor.

"Section 2. Be it further enacted, That hereafter it shall be unlawful for any person, whether heretofore licensed or not under the provisions of Chapter 49, Public Acts of 1943, as amended, to practice in this State Naturopathy as defined in said Acts or otherwise. Any violation thereof shall be a misdemeanor and punishable accordingly.

"Section 3. Be it further enacted, That should any section or portion of this Act be held unconstitutional, it shall not affect the remainder thereof as the Legislature expressly declares it would have enacted the remainder of this statute with such invalid portion thereof elided.

"Section 4. Be it further enacted, That this Act shall take effect from and after its passage, the Public Welfare requiring it."

III

Dates of Judgments and Appeals

The final judgment of the Supreme Court of Tennessee, sustaining the validity of said Section 2 of Chapter 2 of the Public Acts of the General Assembly of the State of Tennessee for the year 1947, plainly sustained the constitu-

BLEED THROUGH – POOR COPY

tionality of said Section of said Act under the Fourteenth Amendment to the Constitution of the United States, and also under Article I, Section 10, of said Constitution.

The final judgment of said Supreme Court was entered on November 29, 1947. A petition for a rehearing filed by petitioners herein was overruled by said Supreme Court on January 16, 1948.

A petition for appeal to the Supreme Court of the United States was presented to the Honorable A. B. Neil, Chief Justice of the Supreme Court of Tennessee, on February 9th, 1948, and was by him allowed on the same day.

IV

Manner in Which Federal Questions Were Raised

The federal questions were raised at the outset of this case and urged throughout the proceedings in the State Court. It was alleged in the original complaint, as amended, that the Act involved contravened "Section 1 of the Fourteenth Amendment to the Constitution of the United States, or that part thereof which is as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." . . .
>
> "Because said Act deprives complainants of their liberty to pursue their calling for which they have prepared and trained themselves, deprives them of their property in said calling and used therein, without due process of law, and arbitrarily and unreasonably discriminates against them by prohibiting the practice of Naturopathy, while denying the right to practice to no other branch of the Healing Arts, which amounts to a denial of the equal protection of the laws." (Origi-

nal Complaint, Par. IV, and Decree entered April 21, 1947, in Minute Book 160, page 303.)

Said original complaint also alleged that "said Act inflicts upon them (petitioners) grievous punishment by prohibiting the practice of their calling and confiscating their property without a judicial trial, in direct contravention of Article I, Section 10, of the Constitution of the United States, prohibiting the States from passing 'any bill of attainder, ex post facto law, or law impairing the obligation of contracts.'" (Original Complaint, Par. IV.)

The decree of the Chancellor entered June 2, 1947, in Minute Book 160, page 466, shows that the Chancery Court found Section 2 of the Act involved to be violative of the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of the State of Tennessee, in its opinion rendered November 29, 1947, said:

> "It results that we are of opinion that the enactment in question prohibiting Naturopathy in this State is a valid exercise of the police power of the Legislature, and no unwarranted discrimination appears in the Act." (Opinion, page 12.)

In the petition for a rehearing, filed by petitioners in the Supreme Court of Tennessee, the conflict of the Act involved with the provisions of the Constitution of the United States raised in the original bill, as above mentioned, was again expressly and specifically brought to the attention of said Court. (Division II of Petition.)

Petitioners further stated in said petition for a rehearing:

> "Petitioners are advised that the holdings of the Supreme Court of the United States are to the effect that an Act like the Act here involved is in conflict

BLEED THROUGH – POOR COPY

with the constitutional provisions and amendments hereinabove referred to, and that Section 2 of said Act is therefore unconstitutional."

Petitioners prayed for a rehearing, and that Section 2 of said Act be declared unconstitutional. (Prayer of Petition for rehearing.)

The Supreme Court of the State said in the concluding paragraph of its opinion filed January 16, 1948, overruling the petition for a rehearing:

> "After careful consideration of the petition to rehear, we are convinced that the Legislature was well within its powers in enacting the statute prohibiting the practice of Naturopathy in this State. The methods employed by Naturopaths may still be used by those formerly practicing Naturopathy if they obtain the qualifications now possessed by Medical Doctors and Osteopaths."

Copies of the opinion of the Supreme Court of Tennessee, filed November 29, 1947, and of the opinion filed January 16, 1948, are appended hereto. These opinions show that the Supreme Court of the State of Tennessee necessarily passed on the Federal questions presented, in order to determine the validity of said State statute.

V

The Federal Questions Involved Are Substantial

The ultimate Federal questions presented to the Supreme Court of the State of Tennessee in this case were two-fold:

A. Whether Section 2 of Chapter 2 of the Public Acts of the General Assembly of the State of Tennessee is constitutional under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

B. Whether said Section 2 of said Act is constitutional under Article I, Section 10, of the Constitution of the United States.

As a basis for determining the constitutionality of said Section of said Act, under the above mentioned constitutional provisions, we set out the following facts, in the light of which the constitutionality of the Act is to be determined. This procedure is proper in view of *Nashville, Chattanooga & St. Louis Ry Co.* v. *Walters*, 294 U. S. 405, 79 Law Ed. 949, and *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153, 82 Law Ed. 1234, 1242.

Underlying Facts

In 1943 the General Assembly of the State of Tennessee enacted Chapter 49 of the Public Acts of 1943, which recognized and defined the practice of Naturopathy, and created a recognized class in the nature of a profession similar to persons practicing medicine, surgery, or dentistry.

Babcock v. *Nudelman*, 367 Ill. 626, 12 N. E. (2d) 635, 637;

McMurdo v. *Getter* (Mass.), 10 N. E. (2d), 139;

Millsap v. *Alderson* (Cal. App.), 219 Pac. 469, 472, 473.

Various amendments were made to said Act by the General Assembly in the year 1945, more strictly defining the field of practice of Naturopathy, and increasing the requirements for admission to practice. Also, in 1945 the said General Assembly authorized the appointment of a Committee to investigate the unauthorized practice of the Healing Arts. This Committee employed an investigator, and on the basis of information obtained from such investigator said Committee filed a report to the General Assembly of 1947, indicating fraudulent conduct on the part of the State Board of Naturopathic Examiners, and misconduct

BLEED THROUGH – POOR COPY

on the part of some Naturopaths. (Exhibit "A" to Answer.)

The investigation resulted in the indictment of twenty-seven persons, of whom fifteen pleaded guilty. (Stipulation Par. (f).)

Also, in response to the publicity and notoriety given the matter, the General Assembly of the State enacted Chapter 2 of the Public Acts of 1947.

Nevertheless, by reference to the stipulation prepared as a statement of fact for the trial of this case, the following statement is found:

> "However, it is further stipulated that the complainants and the majority of the Naturopaths practicing in the State of Tennessee have not been guilty of the practices mentioned, that they do have the ordinary skill requisite for the practice of their calling as required by Chapter 49 of the Public Acts of 1943, as amended, and have complied with the requirements of other Acts applicable to them at the time their licenses were issued, and were not involved in the acts and offenses mentioned in the report of the Committee exhibited to the Answer." (Par. V(e) of Stipulation.)

This stipulation attests that petitioners and the majority of Naturopaths in the State have complied with the requirements of Section 3 of Chapter 49 of the Public Acts of 1943 of Tennessee, that is, that they have shown themselves to be of good moral character, have completed a high school course, and have taken a four-year course, of nine months each, in a reputable chartered school of Naturopathy.

It further means that those who were licensed after the enactment of Chapter 2 of the Public Acts of 1945, of Tennessee, have graduated from a four-year high school course, completed two years at an accredited college or university, and completed courses in general inorganic chemistry, or-

ganic chemistry, biology and physics, before taking their professional education.

It also means that those who were licensed after the enactment of Chapter 42 of the Public Acts of 1945, of Tennessee, must have passed an examination before the Board of Examiners in the Basic Sciences, in anatomy, physiology, chemistry, bacteriology and pathology. (Chapter 92 of the Public Acts of 1943, of Tennessee, Sections 1, 6, 7 and 8.)

The courses of study required of the practitioner of Naturopathy in the approved Naturopathic school are set forth in the affidavits of B. H. Hardwick, Sr., and others, filed pursuant to paragraph V(h) of the stipulation, which are nowhere controverted in the record. These affidavits show that the student of Naturopathy studies the fundamental subjects required for the practice of his profession, including Symptomatology and Diagnosis, for substantially the same length of time, and from many of the same texts studied by the student of Medicine.

The stipulation also attests that the majority of the Naturopaths practicing in this State at the time of the enactment of the legislation involved had the ordinary skill requisite for the practice of their calling, as defined by Chapter 49 of the Public Acts of 1943, of Tennessee, as amended by Chapter 43 of the Public Acts of 1945, of Tennessee. Such definition is as follows:

> "'Nature cure or health by natural methods' and is defined as the prevention, diagnosis, and treatment of human injuries, ailments, and diseases by the use of such physical forces, as air, light, water, vibration, heat, electricity, hydrotherapy, psychotherapy, dietetics, or massage, and the administrations of botanical and biological drugs, *but shall not include the administration of narcotics, sulfa drugs and other toxic drugs, or powerful physical agents, such as X-ray and radium therapy, or surgery.*" (Emphasis ours.)

BLEED THROUGH – POOR COPY

The respondents do not offer any evidence that the practice of Naturopathy is an inherently noxious, harmful or immoral pursuit, or one having a tendency to become such. The Chancellor concluded that it was "not an inherently harmful or dangerous pursuit, but on the contrary, implies what are commonly known to be useful and beneficial methods of treatment." (Chancellor's Opinion, Par. IV.)

As appears from the statutory definition of Naturopathy, the Naturopath in the State of Tennessee was not authorized to use in his practice, "narcotics, sulfa drugs and other toxic drugs, or powerful physical agents, such as X-ray and radium therapy, or surgery. . . ." (Chapter 43 of the Public Acts of Tennessee for 1945.)

The Supreme Court of Tennessee evidently concluded that Naturopathic methods were beneficial. It carefully pointed out in its opinion that "the statute in question is aimed at the practitioner and not at the science. The evident intent of the Legislature was to withdraw recognition of Naturopathy as a separate branch of the Healing Arts but allows the use of its methods. Any person now licensed to practice Naturopathy may continue the use of such methods by obtaining the additional knowledge required to qualify as a general practitioner or as an Osteopath." (Opinion of Supreme Court filed Nov. 29, 1947, p. 6.)

Again, the Supreme Court of the State stated on page 4 of said opinion:

> "No doubt, in the enactment of the Act now under consideration by us, the Legislature was seeking to cure evils connected with the issuance of licenses to practice Naturopathy, and in view of the fact that investigations disclosed that these licenses had been issued in a number of cases to persons totally unqualified was to take steps against the holders of such licenses, and not to outlaw the Acts constituting such. The Act contains no prohibition against the perform-

ance of these acts, but merely makes it unlawful for such person to practice Naturopathy."

A (1) Arbitrary and Unreasonable Effect of the Act

Said Section 2 of the Act in question is so arbitrary and unreasonable in its application to practitioners of Naturopathy that it manifestly violates Section 1 of the Fourteenth Amendment to the Constitution of the United States.

As shown by the opinions of the Supreme Court of Tennessee, said Court considered said Act of the Legislature in the light of the fact that there were some unqualified persons practicing Naturopathy in the State whose licenses ought to be cancelled, therefore an Act depriving all Naturopaths, whether qualified or unqualified, enacted for that purpose, was valid and constitutional.

This conclusion of the Court absolutely disregarded the stipulation of fact upon which the case was tried, although the stipulation expressly stated "that the matters of fact hereinafter stipulated will be treated as being true whether or not they are inconsistent with or differ from any allegations of the bill or averments of the answer." (Stipulation, Par. IV.)

Petitioners pressed upon the Supreme Court of Tennessee the provision of the stipulation in Par. V(a):

> "That the complainants (petitioners) and the majority of the Naturopaths practicing in the State of Tennessee have not been guilty of the practices mentioned, that they do have the ordinary skill requisite for the practice of their calling as required by Chapter 49 of the Public Acts of 1943, as amended, and have complied with the requirements of other Acts applicable to them at the time their licenses were issued, and were not involved in the acts and offenses mentioned in the report of the Committee exhibited to the answer."

BLEED THROUGH – POOR COPY

It was emphasized in briefs filed by Petitioners, and again in the Petition for a Rehearing.

The late Chief Justice Stone, in his concurring opinion in the recent case of *Skinner* v. *Oklahoma,* 316 U. S. 535, 86 L. Ed. 1655, on page 1662 says:

> "A law which condemns without hearing all the individuals of a class to so harsh a measure as the present because some or even many merit condemnation is lacking in the first principles of due process."

The Supreme Court of Tennessee has fallen into error in this case in a manner very similar to the error committed by it in the case of *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Walters,* 294 U. S. 405, 79 L. Ed. 949.

As stated in that case:

> "A statute valid as to one set of facts may be invalid as to another. . . . The police power is subject to constitutional limitations that it may not be exerted arbitrarily and unreasonably."

The Supreme Court of the United States said in that case (p. 432 of U. S. Report, p. 965 of L. Ed.):

> "The Supreme Court of Tennessee did not consider whether in view of the facts relied upon, it was arbitrary and unreasonable to impose upon the Railway one half of the cost of the Underpass. It assumed that the State action was valid because it found that the action was taken 'to promote the safety of persons traveling the highways at grade crossings as well as to promote the safety of persons traveling the railroads at such crossings by eliminating dangerous grade crossings.'"

Similarly, in the case at bar, the Supreme Court of Tennessee has declined to consider whether in view of the stipulated facts that petitioners and the majority of the Naturopaths practicing in Tennessee, "have the ordinary

skill requisite for the practice of their calling as required by Chapter 49 of the Public Acts of 1943, as amended," and have complied with the other Acts regulating their practice and have not been guilty of the offenses mentioned, it was arbitrary and unreasonable to impose upon them the requirement that they obtain licenses to practice Osteopathy or Medicine in order to practice their calling.

Similarly, the Supreme Court of Tennessee has concluded that the Act in question is valid and constitutional because "the Legislature was seeking to cure the evils connected with the issuance of licenses to practice Naturopathy. . . ."

The petitioners have no quarrel with the many cases dealing with the subject of the regulation of the various Healing Arts. These cases are well summarized in the case of *Butcher* v. *Maybury*, 8 Fed. (2d) 155, 158 and 159. But they call attention to the conclusion reached by that Court from a review of all of the decisions. The Court said:

> "The limitation on the above doctrines is the principle that the regulations must be reasonable and must bear some relation to the service to be rendered by the practitioner."

This principle is recognized in *Dent* v. *West Virginia*, 129 U. S. 114, 32 L. Ed. 623, 626; *Hawker* v. *New York*, 170 U. S. 189, 42 L. Ed. 1002, 1004, 1005, and the other decisions of the Supreme Court of the United States on this subject.

It being stipulated that petitioners have the ordinary skill requisite to practice their calling, that they have complied with other Acts regulating same, and are not guilty of the offenses mentioned, it is inconceivable how an Act enacted to prevent the practice of unqualified persons, which imposes upon petitioners the requirement that they obtain licenses as Osteopaths or Medical Doctors in order to practice their calling, can be a reasonable and constitutional regulation as to them.

BLEED THROUGH – POOR COPY

A (2) Denial of Equal Protection of the Laws

The Act in question, as construed by the Supreme Court of Tennessee, applied to petitioners and other Naturopaths, who are already qualified under previous Acts of the State Legislature, to practice their calling in Tennessee, requires that in addition to the four years, of nine months each, which they have been required to attend a reputable chartered school of Naturopathy, they must now personally attend and complete a four year course of not less than nine months in each year, in a school of Osteopathy.

(Williams' Annotated Code of Tennessee, Section 7004);

(Sec. 1 of Ch. 150 of the Public Acts of Tennessee for 1939.)

Or, they must present a certificate from a Medical School whose curriculum is as high as that of the Medical School of the University of Tennessee (Williams' Annotated Code of Tennessee, Section 6923, Section 3 of Ch. 181 of the Public Acts of Tennessee for 1945), in order to obtain licenses as Osteopaths or as Doctors of Medicine, so that they may continue the practice of Naturopathy.

The striking fact is that although petitioners and the majority of the other Naturopaths practicing in Tennessee have under said stipulation qualified to practice their profession, as provided by existing laws, yet this Act in question, having been held applicable to them, requires that they attend other professional schools for a period of four years, making a total period of preparation of eight years in order to practice their calling, whereas, the doctors in no other branch of the Healing Arts are required to attend professional schools for more than four years.

The application of this Act to petitioners is therefore arbitrary, discriminatory and a denial to them of the equal

protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

The guaranty of "equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369, 30 L. Ed. 220, 226; *Skinner* v. *Oklahoma*, 316 U. S. 535, 86 L. Ed. 1655.

B. Violation of Article I, Section 10, of the Constitution of the United States

Petitioners insist that said Section 2 of said Act contravenes Article I, Section 10, of the Constitution of the United States, because it is in the nature of a bill of attainder, or of a bill of pains and penalties.

This is a case where the Legislature has exercised the powers and office of Judge, pronouncing upon the guilt of the parties, determining the sufficiency of the proof produced, whether conformable to the rules of evidence or otherwise, and fixing the degree of punishment in accordance with its own notion of the enormity of the offense. Such an Act is in the nature of a bill of attainder, or a bill of pains and penalties.

11 American Jurisprudence, Sec. 347, p. 1175.

The Opinion of the Supreme Court of Tennessee in this case, delivered November 29, 1947, shows unequivocally that this Act is aimed at the practice of Naturopathy by the practitioners already licensed under Chapter 49 of the Public Acts of 1943, as amended, because of certain offenses committed by the State Board of Naturopathic Examiners and some of the Naturopaths. The Legislature had heard the evidence, consisting of an *ex parte* report of a hired investigator, and has pronounced its judgment of extinction upon all Naturopaths. The Court said in its Opinion on page 4:

> "As we conceive the legislative intent, as gathered from the face of the statute and from conditions exist-

BLEED THROUGH – POOR COPY

ing at the time, is that the prohibition leveled by it was directed at the persons engaged in the practice of Naturopathy in this State, and that this legislative purpose was evidenced first, by a bar to all future licensing of such and second, by a prohibition against the use of the licenses therefore issued."

In the latest case on this question, *United States* v. *Lovett*, 328 U. S. 303, 315, 90 L. Ed. 1252, 1259, the Supreme Court of the United States re-affirmed the doctrine of *Cummings* v. *Missouri*, 4 Wall. 277, 18 L. Ed. 356, and *Ex parte Garland*, 4 Wall. 333, 18 L. Ed. 366, and said:

"Neither of these cases has ever been overruled. They stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial, are bills of attainder prohibited by the Constitution . . . just as the statute in the two cases mentioned it operates as a legislative decree of perpetual exclusion from a chosen vocation. This permanent proscription from any opportunity to serve the Government is punishment of a most severe type.

The effect was to inflict punishment without the safeguards of a judicial trial and 'determined by no previous law or fixed rule'. The Constitution declares that that can not be done either by a State or by the United States.

Those who wrote our Constitution well knew the danger inherent in special legislative Acts which take away the life, liberty, or property of particularly named persons, because the Legislature thinks them guilty of conduct which deserves punishment."

As indicated in this Opinion, the Supreme Court of the United States is asserting the constitutional principles that the rights, privileges and properties of individuals and minority groups are protected by the fundamental law from destruction and oppression by majorities. This doc-

trine is doubtless in part the result of contemplation of the conditions in other countries, where ruthless oppression of minority groups and individuals by majorities has been un-controlled by constitutional limitations.

In this connection we think it proper to point out the distinction between the case of *Hawker* v. *New York*, 170 U. S. 189, 42 L. Ed. 1002, and the case at bar. The *Hawker* case is heavily relied upon by respondents, although we think the distinction between it and the case at bar is clear.

In the *Hawker* case the question presented was whether a statute which provided that any person after conviction of a felony who shall attempt to practice medicine, or shall so practice, shall be guilty of a misdemeanor, etc., when applied to a physician who had been convicted of a felony prior to the passage of the Act, was unconstitutional when so applied.

The basis of the Court's conclusion in said case is found in its opinion on page 196, as follows:

> "When the Legislature declares that whoever has violated the criminal laws of the State shall be deemed lacking in good moral character *it is not laying down an arbitrary or fanciful rule—one having no relation to the subject matter*—but is only appealing to a well recognized fact of human experience; and if it may make a violation of criminal law a test of bad character, what more conclusive evidence of the fact of such violation can there be than a conviction duly had in one of the Courts of the State?" (Emphasis ours).

The *Hawker* case was distinguished from the cases of *Cummings* v. *Missouri*, and *Ex parte Garland*, *supra*, in the following language on page 198:

> "It was held that, as many of the matters provided for in these oaths had no relation to the fitness or qualification of the two parties, the one to follow the profession of a Minister of the Gospel and the other to act

BLEED THROUGH – POOR COPY

> as an attorney and counsellor, the oaths should be considered not legitimate tests of qualifications, but in the nature of penalties for past offenses."

In the instant case, we have the majority of the Naturopaths, including petitioners of whom it is stipulated they have the ordinary skill to practice their calling, as defined by the existing Acts, and have complied with the Acts regulating their calling.

But the Legislature of Tennessee says in the Act under consideration, as construed by the Court, in effect:

> "You Naturopaths, even though you are qualified to practice your calling, must obtain licenses to practice Osteopathy or Medicine in order to be permitted to practice your calling."

We respectfully submit that such requirements imposed upon these Naturopaths, under the stipulated facts, are not legitimate tests of their qualifications, which are already admitted, but are in the nature of penalties for past offenses committed by some of them for which the majority are not responsible.

Section 2, Chapter 2, of the Public Acts of 1947, of Tennessee, therefore, falls within the inhibition of Article I, Section 10, of the Constitution of the United States.

VI

It is, therefore, respectfully submitted that this Court has jurisdiction of this appeal under Section 237 (a) of the Judicial Code, as amended.

WELDON B. WHITE,
J. C. DALE, JR.,
GOODPASTURE, [redacted], CARPENTER & DALE,
Attorneys for Appellants,
612 Commerce Union Bank Building,
Nashville 3, Tennessee.

APPENDIX "A"

W. E. Davis et al.,

v.

Roy H. Beeler, Attorney General, et al.

Davidson Equity

Opinion

The purpose of the bill filed in this cause was to determine the validity of Chapter 2 of the Public Acts of 1947. This Act deals with the practice of naturopathy in this State. Section 1 of the Act repeals the Act authorizing the licensing of naturopaths, and section 2 prohibits the practice of naturopathy in this State.

The chancellor upheld the validity of section 1 of the Act, but struck down section 2 because it constituted an unwarranted abuse of the police power of the Legislature and held that naturopathy, being a lawful vocation, could not be prohibited but could only be regulated.

The effect of the chancellor's decree is to remove from the Code the provisions as to licensing of applicants to practice naturopathy, but to leave in effect the licenses granted from 1943 to 1947. It appears that there are some two hundred licensed naturopaths in the State at the present time.

In construing a statute to ascertain the legislative intent, it is permissible to take note of the conditions existing at the time of such an enactment. It appears that at the session of the General Assembly previous to the one enacting this statute, a committee was appointed to investigate the unlawful practice of the healing arts, and that the committee made a report to the General Assembly enacting the statute. The report revealed that licenses to practice naturopathy had been issued to wholly unqualified individuals; that they had been purchased; that they had been issued as a result of fraudulent co-operation; that a number of corporations had been chartered by naturopaths to issue certificates of compliance with the educational requirements

BLEED THROUGH – POOR COPY

of existing statutes; and that some of these chartered schools issued diplomas to persons who had attended the schools for a period of time not in excess of one week, but which diplomas certified that the holders thereof were qualified in a number of subjects dealing with the healing arts.

Appellants do not contend that the practices which go to constitute the practice of naturopathy are without benefit in appropriate cases. They take the position further that nothing in the statute in question undertakes to outlaw them nor to prohibit their use by qualified persons.

Naturopathy is defined in Chapter 49 of the Acts of 1943, as amended (Williams' Code, § 7025.4), as follows:

> "By this act naturopathy is permitted to be practiced in the State of Tennessee under provisions of this act when a person is so qualified, and means, 'Nature cure or health by natural methods' and is defined as the prevention, diagnosis, and treatment of human injuries, ailments, and diseases by the use of such physical forces as air, light, water, vibration, heat, electricity, hydrotheraphy, psychotherapy, dietetics, or massage, and the administration of botanical and biological drugs, but shall not include the administration of narcotics, sulfa drugs and other toxic drugs, or powerful physical agents, such as X-ray and radium therapy, or surgery, the 'minor matters' mentioned in section 12 (§ 7025.12) of this act to be construed as not including tonsillectomy, the opening of the thoracic or abdominal cavities or other major operations requiring an incision. Provided, that this bill or any language shall not apply to, or in any way affect medical doctors."

No doubt, in the enactment of the Act now under consideration by us, the Legislature was seeking to cure the evils connected with the issuance of licenses to practice naturopathy, and in view of the fact that investigations disclosed that these licenses had been issued in a number of cases to persons totally unqualified was to take steps against the holders of such licenses, and not to outlaw the acts constituting such. The Act contains no prohibition against the

performance of these acts, but merely makes it unlawful for such person to practice naturopathy.

As we conceive the legislative intent, as gathered from the face of the statute and from conditions existing at the time, is that the prohibition leveled by it was directed at the persons engaged in the practice of naturopathy in this State, and that this legislative purpose was evidenced first, by a bar to all future licensing of such and second, by a prohibition against the use of the licenses theretofore issued. The legislative attempt, in enacting the statute under consideration, was to prevent the practice of naturopathy by ones having only limited qualifications and not possessing what might be termed a general practitioner's or osteopath's certificate, and it cannot be held that the Legislature intended to prohibit the performance of the acts.

Physicians are licensed under Chapter 181 of the Public Acts of 1945, and osteopaths under section 7003 et seq. of Williams' Code. No prohibition exists against these generally licensed practitioners from performing the acts in question and when the three statutory schemes are read together and as a whole, it appears that the Legislature does not deny to osteopaths or general practitioners the right to use the methods employed by the complainants but simply sought to regulate the employment of those methods and to confine them to those having a general qualification. The effect of the statutes governing the practice of medicine, the practice of osteopathy, and the present statute is that no person shall practice naturopathy unless he be licensed either as a general practitioner or as an osteopath. It cannot be disputed that the Legislature has the right to require a general practitioner's license for those who desire to practice a limited branch of the healing arts. The present statute may be treated as one imposing additional qualifications upon persons already in the practice of the profession. Hawker *v.* New York, 170 U. S. 189, 47 L. ed. 1002; Reetz *v.* Michigan, 188 U. S. 505, 47 L. ed. 563. The present statute discloses an effort on the part of the Legislature to regulate one phase of the healing arts and should be construed in pari materia with other statutes upon this subject.

BLEED THROUGH – POOR COPY

In Howard & Herrin *v.* N. C. & St. L. Ry. Co., 153 Tenn. 649, 660, the Court said:

> "Statutes forming a system or scheme should be construed so as to make that scheme consistent in all its parts and uniform in its operation. Harris *v.* State, 96 Tenn., 496, 34 S. W., 1017; *Coke & Coal Co.* v. *Steel Co.*, 123 Tenn., 428, 131 S. W., 988, 31 L. R. A. (N. S.), 278; *Bird* v. *State*, 131 Tenn., 518, 175 S. W., 554; Ann. Cas., 1917A, 634. All acts *in pari materia* should be taken together as if one law. Merriman *v.* Lacefield, 51 Tenn. (4 Heisk.), 269."

Nowhere in this statute or in any of the related statutes can there be found prohibition against the use of these methods by persons otherwise qualified and licensed to use them. By obtaining a general practitioner's license or license to practice osteopathy, persons may pursue the practice of naturopathy without legal restraint. Stated in another way, this statute merely required that persons desiring to practice naturopathy shall obtain a general practitioner's license or one to practice osteopathy. Such a construction permits the science to be used by general practitioners and by osteopaths. The statute in question is aimed at the practitioner and not at the science. The evident intent of the Legislature was to withdraw recognition of naturopathy as a separate branch of the healing arts but allows the use of its methods. Any person now licensed to practice naturopathy may continue the use of such methods by obtaining the additional knowledge required to qualify as a general practitioner or as an osteopath.

In Commonwealth *v.* Zimmerman, 221 Mass. 184, 108 N. E. 893, 895, the Supreme Court of Massachusetts, in sustaining such requirement, gives its reason as follows:

> ". . . The protection of the public from those who undertake to treat or manipulate the human body without that degree of education, training and skill which the Legislature has prescribed as necessary to the general safety of the people is within the police power of the state. This general purpose may be effectuated by requiring even of those who propose to confine their

practice to a narrow specialty a much broader knowledge of the subject provided such qualification is regarded by the Legislature as necessary for the practice of any branch of medicine. The statute does not impair in any constitutional sense the liberty of the defendant. The protection of the public health is an object of such vital importance to the welfare of the state that any rational means to that end must be upheld."

In State *v.* Smith, 233 Mo. 242, 135 S. W. 465, 472, the same insistence was made and rejected by the Supreme Court of Missouri in the following language:

". . . The Legislature thought, perhaps, that this act was necessary to protect credulous sick people from injury at the hands of charlatans and quacks, with their specious promises of a sure cure without drugs; or it may have been thought necessary to forbid harmless practices in order to insure protection against those that are dangerous and hurtful. Sick people sometimes grow desperate in their search for a cure, or their judgment becomes weakened, so that they fall an easy prey to the ingenious and varied devices of the pretended healer."

Dr. Herzog in his work on Medical Jurisprudence very clearly calls attention to the dangers flowing from the limited knowledge of the limited practitioner as follows:

"While electro-therapy, mechano-therapy, hydrotherapy, suggestive therapeutics, and certain other forms of treatment for which licenses are issued to limited practitioners are valuable in many pathological conditions, the limited practitioner is likely to do a great deal of harm, not only because he is not thoroughly educated as a physician but as he is only licensed to use a certain system of treatment, he is apt to use it in cases to which it is not adapted."

Obviously, a much more accurate diagnosis may be expected from a general practitioner who has studied medicine and disease in all its phases than from a limited one with only limited preparation therefor, and an accurate

BLEED THROUGH – POOR COPY

diagnosis of an ailment lies at the very foundation of successful methods of treatment.

The choice of the remedy to be applied to the evil rests with the Legislature and not with the courts, these being co-ordinate branches of government.

But it is insisted that what has been indicated herein will render the statute discriminatory against naturopaths and in favor of osteopaths and chiropractors.

In Louisiana State Board of Medical Examiners *v.* Fife, 162 La. 681, 111 So. 58, 61 (affirmed by U. S. Supreme Court in 71 L. Ed. 1324), the Supreme Court of Louisiana said:

> ". . . If the Legislature were called upon to recognize every school of medicine, and to deal with it as such, requiring nothing but what the system practiced by each school demands, there might be some force to defendants' contention, but, as we have held, the Legislature is not called upon to do so, but has a reasonable discretion as to whether a particular school should be recognized and special provision made for it. Since the Legislature has such discretion, defendants cannot complain, on the ground of being unjustly discriminated against, because the Legislature has not deemed proper to recognize their school of medicine, and make special provision for those desiring to practice that system, by prescribing a course of study in accord with the theories which it holds for restoring health. See Allopathic State Board of Medical Examiners *v.* Fowler, supra (50 La. Ann. 1358, 24 So. 809); Johnson *v.* State (Tex. Cov. App.), 267 S. W. 1057; Singh *v.* State, 66 Tex. Cr. R. 156, 140 S. W. 891; State *v.* Morrison, 98 W. Va. 289, 127 S. E. 75."

Section 7004 of Williams' Code requires that osteopaths shall successfully pass an examination upon virtually all subjects within the purview of medical science. Furthermore, the qualifications for osteopaths are substantially the same as those required by general practitioners. No doubt the Legislature thought that the proficiency in the healing arts was sufficient to authorize them to practice generally.

As to chiropractors, they are required to show evidence of having studied certain medical subjects for an extended period too, and the statute authorizing them to practice their treatment is restricted to manual manipulation of the spine and adjacent tissues. Naturopaths were not so restricted in their treatment of diseases but might treat them generally with the exception of surgery and the administration of toxic and powerful drugs. It is not difficult to see, considering the areas in which they operate, why the Legislature would demand higher educational requirements for naturopaths than are required for chiropractors.

After all, why should not persons who hold themselves out to be doctors, who not only rub and massage patients but prescribe medicine for them, even though narcotics and sulfa drugs are prohibited, be required to have the training of a medical doctor? Evidently, the Legislature thought there was too much border-lining in the practice of naturopathy and determined to stamp out the evil that was not in the science but in the practicing of it, to the definite injury of credulous sufferers.

In Zahn *v.* Board of Public Works, 274 U. S. 325, 328, 71 L. Ed. 1074, 1076, the Supreme Court of the United States said:

> ". . . The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. Euclid *v.* Ambler Realty Co., supra, 388, 396 (ante, 303, — A. L. R. —, 47 Sup. Ct. Rep. 114); Radice *v.* New York, 264 U. S. 292, 294, 68 L. Ed. 690, 694, 44 Sup. Ct. Rep. 325; Hadscheck *v.* Sebastian, 239 U. S. 394, 408-414, 60 L. Ed. 348, 355-358, 36 Sup. Ct. Rep. 143, Ann. Cas. 1917B, 927; Thomas Cusack Co. *v.* Chicago, 242 U. S. 526, 530, 531, 61 L. Ed. 472, 475, 476, L. R. A. 1918A, 136, 37 Sup. Ct. Rep. 190, Ann. Cas. 1917C, 594; Rast *v.* Van Deman & L. Co., 240 U. S. 342, 357, 60 L. Ed. 679, 687, L. R. A. 1917A, 421, 36 Sup. Ct. Rep. 370, Ann. Cas. 1917B, 455; Price

BLEED THROUGH – POOR COPY

v. Illinois, 238 U. S. 446, 452, 59 L. Ed. 1400, 1405, 35 Sup. Ct. Rep. 892."

It results that we are of opinion that the enactment in question prohibiting naturopathy in this State is a valid exercise of the police power of the Legislature and no unwarranted discrimination appears in the Act.

The decree of the chancellor is accordingly reversed as, in our opinion, section 2 of the Act is a valid enactment.

(S.) PREWITT, *J.*

BURNETT, *J.*, not participating.

APPENDIX "B"

W. E. DAVIS, Et Al.,

v.

ROY H. BEELER, Attorney General, Et Al.

Davidson Equity

On Petition to Rehear

A petition to rehear has been filed herein, but a number of the matters complained of were fully considered by this Court in our former opinion.

We held the legislation in question to be within the police power of the legislature, and this being true, it becomes immaterial what portion of the regulated profession requires safeguards, as it is not a function of this Court to disturb the motives of a legislative body in enacting legislation within its power.

The law applicable to the power of the Legislature in regulating branches of the healing arts is well expressed in the case of Butcher *v.* Maybury, 8 F. (2d) 155, 158-159, as follows:

"The right of a physician to practice his profession is a property right, of which he cannot be arbitrarily deprived. Dent *v.* West Virginia, 129 U. S. 114, 123,

124, 9 S. Ct. 231, 32 L. Ed. 623; Douglas *v.* Noble, 261 U. S. 165, 43 S. Ct. 303, 67 L. Ed. 590; Bongi *v.* Perotti, 224 Mass. 152, 112 N. E. 853, 855, L. R. A. 1916F, 831; Lawrence *v.* Board of Registration, 239 Mass. 424, 132 N. E. 174, 176; State *v.* Medical Board, 32 Minn. 324, 20 N. W. 238, 50 Am. Rep. 575, 576.

"The right is a qualified one, and is held in subordination to the duty of the state under the police power to protect the public health. Hawker *v.* New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002, Lawrence *v.* Board of Registration, 239 Mass. 424, 132 N. E. 174, 176. The police power cannot be stipulated or bartered away. Gray *v.* Connecticut, 159 U. S. 74, 15 S. Ct. 985, 40 L. Ed. 80. In State *v.* Hovorka, 100 Minn. 249, 252, 110 N. W. 870, 871, 8 L. R. A. (N. S.) 1273, 1275 (10 Ann. Cas. 398) it is said:

" 'No person can acquire a vested right to continue, when once licensed, in a business, trade, or occupation which is subject to legislative control and regulation under the police power. The rights and liberty of the citizen are all held in subordination of that governmental prerogative, and to such reasonable regulations and restrictions as the Legislature may from time to time prescribe. * * * Regulations so prescribed and conformed to by the citizen may be subsequently changed or modified by the Legislature, whenever public interest require it, without subjecting its action to the charge of interfering with contract or vested rights. This is elementary.'

"In a note found on page 1273 of 8 L. R. A. (N. S.) the author says:

" 'The granting of a license in such cases is merely the means taken by the state, in the exercise of its police power, to regulate and restrict the engaging in certain professions and occupations for the public good, and confers no rights whatever, in the way of a contract with the state, upon the licensee. He takes the same subject to the right of the state, at any time that the public good demands, to make further restrictions and regulations thereto; and, if such restrictions and regulations are reasonable, they will be upheld, even

BLEED THROUGH – POOR COPY

though they may actually prohibit some people from further engaging in such occupations or professions under a license previously granted.'

"The authorities hold without dissent that it is competent for the Legislature to prescribe qualifications for those who are to practice medicine and thus to assure that they shall possess the requisite character and learning. Dent *v.* West Virginia, 129 U. S. 114, 122, 9 S. Ct. 231, 32 L. Ed. 623; Hawker *v.* New York, 170 U. S. 180, 18 S. Ct. 573, 42 L. Ed. 1002; State *v.* State Medical Board, 32 Minn. 324, 20 N. W. 238, 50 Am. Rep. 575, 577. The regulation of drugless healers is a proper exercise of the police power. Crane *v.* Johnson, 242 U. S. 339, 37 S. Ct. 176, 61 L. Ed. 348, Ann. Cas. 1917B, 796. The regulatory power of the state may be properly committed to an administrative board or officer. Douglas *v.* Noble, 261 U. S. 165, 170, 43 S. Ct. 303, 67 L. Ed. 590; State *v.* State Medical Board, 32 Minn. 324, 20 N. W. 238, 50 Am. Rep. 575, 577.

"These regulatory statutes may be made operative on those engaged in practice prior to the enactment of the statutes. Dent *v.* West Virginia, 129 U. S. 114, 122, 9 S. Ct. 231, 32 L. Ed. 623; Collins *v.* Texas, 223 U. S. 288, 32 S. Ct. 286, 56 L. Ed. 439; Lawrence *v.* Board of Registration, 239 Mass. 424, 132 N. E. 174, 176. The state may change the qualifications from time to time, making them more rigid. Dent *v.* West Virginia, 120 U. S. 114, 122, 9 S. Ct. 231, 32 L. Ed. 623; Gray *v.* Connecticut, 159 U. S. 74, 15 S. Ct. 985, 40 L. Ed. 80; State *v.* Hovorka, 100 Minn. 249, 110 N. W. 870, 8 L. R. A. (N. S.) 1273, 1275, 10 Ann. Cas. 398.

"The Legislature may prescribe qualifications, both as to character and learning, which will require those in practice to give up their occupation. Dent *v.* West Virginia, 129 U. S. 114, 122, 9 S. Ct. 231, 32 L. Ed. 623; Hawker *v.* New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002. Legislation prescribing qualifications which a practitioner cannot meet because of conditions antedating the enactment of the legislation is valid. Such legislation does not constitute punishment; it is

legitimate regulation. Hawker *v.* New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002; Meffert *v.* State Board of Medical Registration, 66 Kan. 710, 72 P. 247, 1 L. R. A. (N. S.) 811."

The authorities mentioned in the case quoted above disclose that it lies within the police power to require educational qualifications of those already engaged in the practice of any profession.

The insistence that the Act is in the nature of a bill of attainder is answered by Butcher *v.* Maybury, supra, where the same insistence was made. The reply to this insistence in that case is as follows at pages 159-160:

"'A bill of attainder is a legislative act which inflicts punishment without a judicial trial.' Cummings *v.* Missouri, 4 Wall. 277, 323, 18 L. Ed. 356. The statute in question inflicts no punishment. Meffert *v.* State Board of Medical Registration, 66 Kan. 710, 72 P. 247, 251, 1 L. R. A. (N. S.) 811; Hawker *v.* New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002. If plaintiffs lose the right to continue the practice of their profession, it will not be as a punishment for some offense committed by them, but because their qualifications do not measure up to the legislative requirements.

"In Calder *v.* Bull, 3 Dall. (Pa.) 386, 390, 1 L. Ed. 648, the court classifies ex post facto laws as follows:

"'(1) Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

"'(2) Every law that aggravates a crime, or makes it greater than it was when committed.

"'(3) Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime, when committed.

"'(4) Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.'

BLEED THROUGH – POOR COPY

"This definition has been repeatedly approved in form or substance. Hept *v.* Utah, 110 U. S. 574, 589, 4 S. Ct. 202, 28 L. Ed. 262; Mallett *v.* North Carolina, 181 U. S. 589, 593, 21 S. Ct. 730, 45 L. Ed. 1015; Kentucky Union Co. *v.* Kentucky, 219 U. S. 140, 31 S. Ct. 171, 55 L. Ed. 137. It is manifest that the statute in question does not fall within the above classification. It has been expressly held that a statute which makes provision for the cancellation of licenses of those engaged in the practice of medicine is not obnoxious to the ex post facto provision of the federal Constitution. Reetz *v.* Michigan, 188 U. S. 505, 510, 23 S. Ct. 390, 47 L. Ed. 563."

After careful consideration of the petition to rehear, we are convinced that the Legislature was well within its powers in enacting the statute prohibiting the practice of naturopathy in this State. The methods employed by naturopaths may still be used by those formerly practicing naturopathy if they obtain the qualifications now possessed by medical doctors and osteopaths.

It results that the petition to rehear is denied.

PREWITT, J.

All concur.